

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
ENTERED

APR 26 2007

Michael M. Milby, Clerk of Court
By Deputy Clerk [Signature]

CESAR ARIZMENDI,

Plaintiff,

v.

ORC INDUSTRIES, INC.,

Defendant.

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CIVIL ACTION NO. B-06-125

OPINION & ORDER

BE IT REMEMBERED that on April 25, 2007, the Court **GRANTED** Defendant ORC Industries, Inc.'s Notice of Motion and Motion for Partial Judgment on the Pleadings. Dkt. No. 26.

In its motion, Defendant seeks judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c), as to Plaintiff's fourth cause of action, for breach of a common law fiduciary duty. *Id.* As support for its motion, Defendant argues that "Texas does not recognize a claim for breach of fiduciary duty brought by an employee against an employer." See Dkt. No. 27, at 3. Therefore, Defendant asks the Court to grant judgment against Plaintiff and for Defendant on this claim. *Id.* at 5.

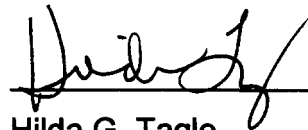
Defendant filed the motion *sub judice* on April 3, 2007. Dkt. No. 26. Plaintiff was therefore required to respond by April 23, 2007. See CHAMBER RULE 5.D. Plaintiff, however, never responded to this motion. The Court therefore takes Plaintiff's failure to respond "as a representation of no opposition" to the motion. See LOCAL RULE LR7.4.

Upon consideration of Defendant's arguments and authority, the Court finds that the motion should be granted. First, "Texas does not recognize a fiduciary duty or a duty of good faith and fair dealing owed by an employer to an employee." *Beverick v. Koch Power, Inc.*, 186 S.W.3d 145, 153 (Tex. App. 2005) (citing *City of Midland v. O'Bryant*, 18

S.W.3d 209, 216 (Tex. 2000)). Therefore, Plaintiff's fourth cause of action fails to state a valid claim. Second, Plaintiff's lack of opposition to Defendant's motion supports the Court's conclusion that Plaintiff's fourth cause of action does not state a valid claim. Finally, Plaintiff provides no authority in his complaint for his fourth cause of action. See Dkt. No. 1, at 7-8.

Based on the foregoing, the Court **GRANTS** Defendant ORC Industries, Inc.'s Notice of Motion and Motion for Partial Judgment on the Pleadings. Dkt. No. 26. Therefore, Plaintiff's fourth cause of action, "Texas Common Law Breach of Fiduciary Duty," is dismissed with prejudice. Finally, the Court **GRANTS** judgment in favor of Defendant ORC Industries, Inc. on Plaintiff's fourth cause of action.

DONE at Brownsville, Texas, this 25 day of April, 2007.

A handwritten signature in black ink, appearing to read 'Hilda G. Tagle', is written over a horizontal line.

Hilda G. Tagle
United States District Judge